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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,700	02/25/2002	Yasuhiro Kamoshida	KSB-003	8343

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EXAMINER	
DRODGE, JOSEPH W	

ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/080,700	KAMOSHIDA ET AL.	
	Examiner	Art Unit	
	Joseph W. Drodge	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *9-13* is/are allowed.

6)☒ Claim(s) *1,2,7 and 8* is/are rejected.

7)☒ Claim(s) *3-6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *0202* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

NON-FINAL REJECTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2 and 8 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Hashimoto et al patent 6,183,159.

Hashimoto et al disclose soil modifying machine 3 (column 8, lines 1-56), paddle mixer(s) 64 (column 23, line 35), drive means (hydraulic motor 70/column 24, line 25), speed control means (column 18, lines 15-19; column 19, lines 28-56 and column 20, lines 3-23), working mode setting means 80a (column 19, lines 45-56) and controller 80.

Regarding claim 2, plural mixers are disclosed in column 13, lines 54-59, etc.).

Regarding claim 8, also see engine 6 and operating means for actuating 83 (column 19, lines 37-44) and also a governor control means for controlling speed of electric motor 46 indirectly via power transmission means (column 11, lines 56-65 and column 16, lines 48-53).

ALLOWABLE SUBJECT MATTER

Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3-6 distinguish in view of recitation of the setting means comprising a plurality of selection switches for setting the kind of soil to be modified. Hashimoto et al does not suggest selection switches. Komoriya et al patents 6,000,641 (of record) and 5,988,937 (newly cited) as well as Koyanagi et al patent 6,004,023 teach similar soil improvement/treating machines accompanied by diverse controls, however also do not suggest setting means having selection switches.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al in view of Komoriya et al patent 6,000,641. This claim differs in requiring the mixers to comprise a rotary cutting mixer and rotary impact mixer(s). Such combination is taught in column 2, lines 4-29 of '641. It would have been obvious to one of ordinary skill in the art to have modified the machine of Hashimoto et al to incorporate the combination of mixers taught by '641, to achieve more uniform mixing and avoid clogging of machine components.

ALLOWABLE SUBJECT MATTER

Claims 9-13 distinguish over the forementioned closest prior art in view of respective recitations of the controller being operable for totalizing hydraulic oil flow rates required by hydraulic actuators based on operating signals according to a plurality of groups and computing a command value corresponding to engine speed according to a maximum required flow rate out of the totaled values. The forementioned prior art is silent as to utilizing combined hydraulic oil flow rates to compute signals for controlling.

Any inquiry concerning this communication or other matters regarding prosecution of this application should be directed to Examiner Joseph Drodge at (703) 308-0403 Monday-Friday between the hours of 8:30 and 4:45. The fax number for the examining Group is (703) 872-9306.

JWD

October 1, 2003

JOSEPH DRODGE
PRIMARY EXAMINER